No. 18-389

In the Supreme Court of the United States

PARKER DRILLING MANAGEMENT SERVICES, LTD.,
Petitioner,

v.

BRIAN NEWTON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF FREEPORT-MCMORAN OIL & GAS LLC, AMPLIFY ENERGY CORP., BETA OPERATING COMPANY, LLC, DCOR, LLC, ENSIGN UNITED STATES DRILLING (CALIFORNIA), INC., AMERICAN PETROLEUM INSTITUTE, CALIFORNIA INDEPENDENT PETROLEUM ASSOCIATION, INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA, NATIONAL ASSOCIATION OF MANUFACTURERS, NATIONAL OCEAN INDUSTRIES ASSOCIATION, OFFSHORE OPERATORS COMMITTEE, and WESTERN STATES PETROLEUM ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

BALDWIN J. LEE
ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP
Three Embarcadero Ctr. 12th Floor
San Francisco, CA 94111
(415) 273-7446

JOHN P. ELWOOD
KEVIN A. GAYNOR
JEREMY C. MARWELL
Counsel of Record
VINSON & ELKINS LLP
2200 Pennsylvania Ave., NW, Suite 500W
Washington, DC 20037
(202) 639-6500
jmarwell@velaw.com

Counsel for Amici Curiae
[Additional counsel for *Amici Curiae* listed at end of brief]

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are companies with oil and gas operations on the Outer Continental Shelf ("OCS") or in the offshore industry, and trade associations whose members operate in, serve, or have other interests in that industry. *Amici curiae* Freeport-McMoRan Oil & Gas LLC, Amplify Energy Corp. (partly through its subsidiary Beta Operating Company, LLC), DCOR, LLC, and Ensign United States Drilling (California), Inc., are companies engaged in the acquisition, exploration, development, and production of oil and gas properties on the OCS, and which employ individuals to work on offshore OCS platforms off the California coast and in the Gulf of Mexico. Several *amici* are defendants in pending litigation in which OCS platform workers assert wage-and-hour claims under California law. Because those cases will likely be affected by the disposition of this case, those *amici* have a direct and substantial interest in this case.

Amici the American Petroleum Institute, California Independent Petroleum Association, Independent Petroleum Association of America, National Association of Manufacturers, National Ocean Industries Association, Offshore Operators Committee, and Western States Petroleum Association are trade associations representing business interests involved or supporting the offshore industry, including crude oil and natural

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than the *amici curiae* or their counsel made a monetary contribution intended to fund the preparation of this brief. The parties were given timely notice and have consented to this filing.

gas producers and oil and natural gas exploration and production companies with operations on the OCS.

Collectively, *amici* participate regularly in legislative, regulatory, and judicial proceedings that may affect their or their members' interests. *Amici* have an interest in ensuring a stable and predictable legal framework governing the offshore industry, to allow businesses and employees to know which labor and employment practices (among other laws) apply to U.S. offshore operations. All *amici* have a strong and direct interest in the question presented here—*i.e.*, the circumstances in which state wage-and-hour laws might apply to operations on the OCS.

INTRODUCTION AND SUMMARY OF ARGUMENT

Oil and gas operations on the OCS play an essential role in the Nation's economy, generating billions of dollars a year for the United States Treasury and employing hundreds of thousands of Americans.[2] OCS operations are also vital to the Nation's energy and national security needs.

More than 70 years ago, this Court recognized that the OCS and its natural resources are "of vital consequence to the nation in its desire to engage in commerce and to live in peace with the world." *United*

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[2] In addition to generating billions of dollars a year in revenue, the federal government recently estimated that offshore oil and gas operations created approximately 315,000 jobs. U.S. Dep't of the Interior and Bureau of Ocean Energy Mgmt., ***2019-2024 National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program*** 1-9, 8-4 (Jan. 2018), https://bit.ly/2lU8cCV.

States v. *California*, 332 U.S. 19, 35 (1947). Congress similarly has recognized that offshore oil and gas operations are essential to the Nation's "economic and energy policy goals" and "national security." See 43 U.S.C. §§1332, 1801, 1802. The Executive Branch has long asserted a national interest in the OCS. See, *e.g.*, Exec. Order 13795, 82 Fed. Reg. 20,815 (Apr. 28, 2017); Proclamation No. 5030, 97 Stat. 1557 (Mar. 10, 1983); Proclamation No. 2667, 59 Stat. 884 (Sept. 28, 1945). Illustrating the significance of the OCS, some commentators have suggested that Congress's assertion of authority over the OCS in 1953 was "more important to the nation than the Louisiana Purchase." Warren M. Christopher, *The Outer Continental Shelf Lands Act: Key to a New Frontier*, 6 STAN. L. REV. 23, 23 (1953).

Employers and employees in this large and vital sector of the economy rely upon predictable and easily implemented legal rules to govern their relationships. The federal government likewise benefits from a well-defined legal regime on the OCS, which encourages operators to bid on new leases and expand development, thus helping to meet the Nation's energy needs and bringing in revenue. Congress created such a framework when it enacted the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. §1331 *et seq.*, which governs the rights and obligations of those who own, operate, and work on offshore drilling platforms.

Through OCSLA, Congress extended the jurisdiction of the United States and its laws to the OCS, declaring it "an area of exclusive Federal jurisdiction." 43 U.S.C. §§1332(1), 1333(a). OCSLA is "a sweeping

assertion of federal supremacy" over the OCS. *Ten Taxpayer Citizens Grp.* v. *Cape Wind Assocs., LLC*, 373 F.3d 183, 188 (1st Cir. 2004). But because "the Federal Code was never designed to be a complete body of law in and of itself," *Rodrigue* v. *Aetna Cas. & Sur. Co.*, 395 U.S. 352, 358 (1969) (quoting 99 Cong. Rec. 6963 (1953)), OCSLA adopts as surrogate federal law the "applicable and not inconsistent * * * laws of each adjacent State." 43 U.S.C. §1333(a). For almost fifty years, every court to consider the question has interpreted that language to mean that state law is adopted as surrogate federal law under OCSLA only when necessary to "supplement[] gaps in the federal law." *Rodrigue*, 395 U.S. at 357; see also *Cont'l Oil Co.* v. *London S.S. Owners' Mut. Ins. Ass'n*, 417 F.2d 1030, 1035-1036 (5th Cir. 1969). In concluding otherwise, the Ninth Circuit rejected decades of well-settled precedent, disrupting the widely held expectations of those who operate on the OCS and in related sectors.

In interpreting OCSLA to allow state law to apply on the OCS even in the absence of a "gap" in federal law, the Ninth Circuit misconstrued the text and structure of that statute and ignored the context in which Congress enacted it. Contrary to OCSLA's text, history, and purpose, the Ninth Circuit's decision effectively accords state law supremacy over federal law in an area under exclusive federal jurisdiction. Given the reality that some States will have different, and even diametrically opposed, policy preferences than the federal government regarding OCS activity, this interpretation invites strategic behavior by coastal States designed to frustrate federal policy on the OCS.

Further, by rejecting a legal standard that has provided the choice-of-law framework on the OCS for almost 50 years, the Ninth Circuit's decision disrupts longstanding and mutually beneficial employment relationships carefully tailored to the unique circumstances of living and working offshore.

If the decision below is allowed to stand, OCS operations across the United States will be subject to the varying, and often conflicting, policy preferences of individual States, creating a fragmented and unpredictable legal framework on the OCS. This Court should reject the Ninth Circuit's interpretation of §1333(a)(2)(A) and reaffirm that federal law is paramount on the OCS.

ARGUMENT

When businesses decide whether and how to invest and operate on the OCS, a key threshold question is whether federal or state law applies. The Outer Continental Shelf Lands Act, 43 U.S.C. §1331 *et seq.*, defines the body of law applicable to the OCS and the structures thereon, including drilling and production platforms. *Rodrigue* v. *Aetna Cas. & Sur. Co.*, 395 U.S. 352, 355 (1969). That Congress designed a legal regime in which federal law is "the exclusive law that govern[s] on the OCS," Br. for Pet'r 19, and thus "prevail[s]" over state law, *Rodrigue*, 395 U.S. at 358, is no surprise.

Before Congress enacted OCSLA, this Court declared in a series of cases that

> under our constitutional arrangement[,] paramount rights to the lands underlying the

> marginal sea are an incident to national sovereignty and * * * their control and disposition in the first instance are the business of the Federal Government rather than the States.

United States v. *Maine*, 420 U.S. 515, 522 (1975); see also *United States* v. *Texas*, 339 U.S. 707 (1950); *United States* v. *Louisiana*, 339 U.S. 699 (1950) ("*Louisiana I*"); *United States* v. *California*, 332 U.S. 19 (1947). The paramountcy cases, in short, proclaimed that the federal government has "exclusive jurisdiction over the OCS." *Shell Oil Co.* v. *Iowa Dep't of Revenue*, 488 U.S. 19, 26 (1988). By enacting OCSLA in 1953, Congress emphatically embraced that view.

I. Consistent with the Statutory Text and Purpose, Every Court Except the Ninth Circuit Has Interpreted OCSLA as Borrowing State Law Only When Necessary to Fill Substantial Gaps in Federal Law

A principal purpose of OCSLA was "to define a body of law applicable" to the OCS and the structures fixed thereon. *Rodrigue*, 395 U.S. at 355-356. Consistent with the "constitutional underpinnings" of the paramountcy cases, *Maine*, 420 U.S. at 524, OCSLA extended the jurisdiction of the United States and its laws to the OCS. 43 U.S.C. §§1332(1), 1333(a); see also *Pac. Operators Offshore, LLP* v. *Valladolid*, 565 U.S. 207, 212 (2012); *Shell Oil*, 488 U.S. at 26-27. "It is evident," based on the text and structure of OCSLA, that "federal law is 'exclusive' in its regulation of" the OCS.

Rodrigue, 395 U.S. at 355-357; see also Br. for Pet'r 5-7, 18-23.

Congress recognized, however, that, "because of its limited function in a federal system," federal law might not address the full range of legal issues potentially arising on the OCS. *Rodrigue*, 395 U.S. at 357. As this Court once explained:

> [T]he "whole circle of legal problems" typically resolved under state law could arise on the OCS, because the large crews working on the great offshore structures would "die, leave wills, and pay taxes. They will fight, gamble, borrow money, and perhaps even kill. They will bargain over their working conditions and sometimes they will be injured on the job."

Shell Oil, 488 U.S. at 27 n.8 (quoting Warren M. Christopher, *The Outer Continental Shelf Lands Act: Key to a New Frontier*, 6 STAN. L. REV. 23, 37 (1953)). Because "the Federal Code was never designed to be a complete body of law in and of itself," *Rodrigue*, 395 U.S. at 358 (quoting 99 Cong. Rec. 6963 (1953)), Congress included a choice-of-law provision that allows for the adoption of the "applicable and not inconsistent" laws of the adjacent States. 43 U.S.C. §1333(a)(2)(A).

This Court first had occasion to interpret §1333(a)(2)(A) in 1969. Based on the statutory text, structure, and purpose, this Court explained that state law is incorporated under §1333(a)(2)(A) only when necessary to "supplement[] gaps in the federal law." *Rodrigue*, 395 U.S. at 357; see also Br. for Pet'r 25-26. This Court highlighted the supremacy of federal law

on the OCS by explaining that OCSLA implements the principle that "federal law should prevail" over state law on the OCS. *Rodrigue*, 395 U.S. at 358. Since *Rodrigue*, this Court has reaffirmed that the laws of the adjacent States apply under OCSLA only when necessary "to fill the substantial 'gaps' in the coverage of federal law."[3] *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. 473, 480 (1981); see also, *e.g.*, *Maryland* v. *Louisiana*, 451 U.S. 725, 752 n.26 (1981); *Chevron Oil Co.* v. *Huson*, 404 U.S. 97, 103-105 (1971).

Shortly after this Court decided *Rodrigue*, the Fifth Circuit addressed whether state law is "applicable and not inconsistent" under §1333(a)(2)(A) when existing federal law provides a comprehensive governing scheme—*i.e.*, when there is no "gap" in federal law. Applying "the recurring theme of *Rodrigue*," the Fifth Circuit held that "the deliberate choice of federal law, federally administered, requires that 'applicable' be read in terms of necessity—necessity to fill a significant void or gap" in federal law. *Cont'l Oil Co.* v. *London S.S. Owners' Mut. Ins. Ass'n*, 417 F.2d 1030, 1036 (5th Cir. 1969). When federal law provides both a right and a remedy, the Fifth Circuit explained, the application of state law is neither "needed [n]or permitted." *Id.* at 1035-1036. That principle applies even when

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[3] This Court's interpretation of §1333(a)(2)(A) is consistent with well-settled principles governing the applicability of state law in federal enclaves, see Br. for Pet'r 20-21, 34-35, as well as this Court's interpretation of other statutes allowing for the adoption of state law in federal enclaves. See, *e.g.*, *Lewis* v. *United States*, 523 U.S. 155, 160 (1998) (explaining that the Assimilative Crimes Act "borrow[s] state law to fill gaps in the federal criminal law that applies on federal enclaves").

state law provides more protection than federal law. See *LeSassier* v. *Chevron USA, Inc.*, 776 F.2d 506, 508-509 (5th Cir. 1985). And until the Ninth Circuit's decision in this case, every court to consider the issue has understood §1333(a)(2)(A) as allowing for the adoption of state law only when necessary to supplement gaps in the federal law. *E.g.*, *Tetra Techs., Inc.* v. *Cont'l Ins. Co.*, 814 F.3d 733, 738 (5th Cir. 2016); *Genina Marine Servs., Inc.* v. *Arco Oil & Gas Co.*, 499 So.2d 257, 259-260 (La. Ct. App. 1986); see also Br. for Pet'r 27-28.[4]

Contrary to long-settled precedent and widely held expectations of employers and employees alike, the Ninth Circuit held here that workers employed on OCS platforms may bring claims under state wage-and-hour laws, Pet. App. 1-2, despite the applicability of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201 *et seq.*, "a comprehensive legislative scheme," *United States* v. *Darby*, 312 U.S. 100, 109 (1941). The Ninth Circuit expressly "reject[ed] the proposition" that state law applies on the OCS only if "necess[ary] to fill a significant void or gap" in federal law. Pet. App. 2 (citing *Cont'l Oil*, 417 F.2d at 1036).

The Ninth Circuit's decision is already having—and if allowed to stand, will continue to have—far-reaching practical and financial consequences for OCS employers and the thousands of employees working offshore

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[4] Prior to the panel's decision here, district courts within the Ninth Circuit had consistently followed *Continental Oil*. See Pet. App. 20 n.13.

pursuant to generous contractual and other arrangements predicated on a legal framework the panel discarded.

II. The Ninth Circuit's Interpretation Gives State Law Supremacy Over Federal Law In An Area Under Exclusive Federal Jurisdiction And Control

The Ninth Circuit's interpretation of §1333(a) effectively "accord[s] state law supremacy over federal law" and "cede[s] the United States' jurisdiction over the OCS to state agencies," Pet. App. 23, contrary to OCSLA's text, purpose, and history. In OCSLA, Congress "emphatically implemented its view" that "the OCS [is] subject to the exclusive jurisdiction and control of the Federal Government." *Shell Oil*, 488 U.S. at 26-27. Embedded in the statute is the principle that "federal law should prevail" over state law, particularly where, as here, a federal statutory scheme does apply. *Rodrigue*, 395 U.S. at 358; accord *Nations* v. *Morris*, 483 F.2d 577, 590 (5th Cir. 1973) (stating that "[t]here is no need to bring aboard" state law on the OCS "to cause liability to be fixed where Congress never intended it").

In the Ninth Circuit's mistaken view, even when a comprehensive federal scheme governs claims arising on the OCS, state law will control so long as it "pertain[s] to the subject matter at hand," Pet. App. 21-27, and is not "inconsistent with" existing federal law (under the Ninth Circuit's diluted reading of "incon-

sistent," see Pet. App. 27-39). The Ninth Circuit's interpretation cannot be reconciled with OCSLA's text and purpose.

A. The OCS Is Subject to the Exclusive Jurisdiction and Control of the Federal Government

To understand why Congress chose to make federal law paramount on the OCS, it is necessary to understand the context in which OCSLA was passed. Beginning in the 1930s, a sharp dispute arose between the coastal States and the federal government over jurisdiction and ownership of submerged coastal lands and their natural resources. *United States* v. *Louisiana*, 363 U.S. 1, 5, 16-17 (1960); see also Edward A. Fitzgerald, *The Seaweed Rebellion: Federal-State/Provincial Conflicts over Offshore Energy Development in the United States, Canada, and Australia*, 7 CONN. J. INT'L L. 255, 257 (1992); Dr. Edward A. Fitzgerald, *The Tidelands Controversy Revisited*, 19 ENVTL. L. 209, 212-214 (1988); Daniel S. Miller, *Offshore Federalism: Evolving Federal-State Relations in Offshore Oil & Gas Development*, 11 ECOLOGY L. Q. 401, 407 (1984). The impetus for the dispute was the discovery of oil on the seabed, which led various coastal States to lease the land for exploration. *California*, 332 U.S. at 25, 38.

The controversy boiled over after World War II, when President Truman declared that the OCS was subject to the jurisdiction and control of the United States. Proclamation No. 2667, 59 Stat. 884 (Sept. 28, 1945); see also Exec. Order 9633, 10 Fed. Reg. 12,305-01 (Oct. 2, 1945). President Truman's proclamation

"effectively foreclosed any future state claims to the [OCS]," Miller, *Offshore Federalism*, 11 ECOLOGY L. Q. at 407, and thus defined "the controversy as a strictly domestic conflict between the federal and coastal state governments," Fitzgerald, *The Tidelands Controversy*, 19 ENVTL. L. at 214. Faced with an uncooperative Congress, "the Truman administration resorted to litigation." *Ibid.*

This Court settled the debate in 1947, holding that the federal government, and not the States, had "paramount rights in and power over" submerged coastal lands, including submerged lands within the three-mile belt and the OCS.[5] See *California*, 332 U.S. at 33-34, 38-39; see also *Maine*, 420 U.S. at 519-520. Because of the significant matters of national concern involved—*i.e.*, commerce, national security, and international law—this Court rejected the idea that the "local interests" supporting a State's control over inland waters extended to submerged coastal lands.[6] *California*, 332 U.S. at 34-36. Three years later, this Court reaffirmed that submerged coastal lands are

> a national, not a state concern. National interests, national responsibilities, national

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[5] The coastal States never seriously contested the federal government's exclusive jurisdiction over the OCS—*i.e.*, the lands and natural resources lying beyond the three-mile belt. See Br. for Pet'r at 5; see also *Maine*, 420 U.S. at 519, 524-526.

[6] Changes in federal policy concerning offshore oil and gas exploration and production have often coincided with issues of international significance. See Fitzgerald, *The Seaweed Rebellion*, 7 CONN. J. INT'L L. at 257, 262-263 (discussing increased offshore activity in response to World War II and the 1973 oil embargo).

> concerns are involved. The problems of commerce, national defense, relations with other powers, war and peace focus there. National rights must therefore be paramount in that area.

Louisiana I, 339 U.S. at 704; see also *Texas*, 339 U.S. at 719-720. These cases established that, as a matter of constitutional structure, "paramount rights" to the OCS are "an incident to national sovereignty," meaning that the control of the OCS is "in the first instance * * * the business of the Federal Government rather than the States." *Maine*, 420 U.S. at 522; accord *United States* v. *Alaska*, 521 U.S. 1, 5 (1997) ("Ownership of submerged lands * * * is an essential attribute of sovereignty." (citation omitted)). In other words, the paramountcy cases established the federal government's "exclusive jurisdiction over the OCS." *Shell Oil*, 488 U.S. at 26; see also *Gulf Offshore*, 453 U.S. at 479 n.7 (stating that the paramountcy cases held that "the Federal Government enjoyed sovereignty and ownership" of the OCS "to the exclusion of adjacent States").

In response to these decisions, Congress passed the Submerged Lands Act, 43 U.S.C. §1301 *et seq.*, which ceded "any federal interest in the lands within three miles of the coast, while confirming the Federal Government's interest in the area seaward of the 3-mile limit." *Maryland*, 451 U.S. at 730; cf. *Alaska*, 521 U.S. at 6 (the Submerged Lands Act "establishes States' title to submerged lands beneath a 3-mile belt of the territorial sea, which would otherwise be held by the United States" (citation omitted)). Shortly thereafter,

Congress enacted OCSLA, which extended the jurisdiction of the United States and its laws to the OCS—defined as the submerged lands lying seaward of the three-mile boundary, 43 U.S.C. §§1301(a), 1331(a)—and declared it "an area of exclusive Federal jurisdiction." *Id.* §§1332(1), 1333(a)(1). Thus, the three-mile boundary is where "the OCS commences," *Amoco Prod. Co.* v. *Vill. of Gambell*, 480 U.S. 531, 547 (1987), and "the states' jurisdiction ends," *Alabama* v. *U.S. Dep't of Interior*, 84 F.3d 410, 412 (11th Cir. 1996). Importantly, both pieces of legislation "embraced rather than repudiated" the principle that "paramount rights to the offshore seabed inhere in the Federal Government as an incident of national sovereignty." See *Maine*, 420 U.S. at 524-527. Neither statute "call[s] into question" the federal government's "paramount sovereign authority over submerged lands beneath the territorial sea." *Alaska*, 521 U.S. at 35; see also *Shell Oil*, 488 U.S. at 27.

The fact that Congress endorsed and implemented through OCSLA the constitutional principles of the paramountcy cases is crucial context informing any interpretation of the statute. See *Abramski* v. *United States*, 573 U.S. 169, 179 (2014); *Dolan* v. *U.S. Postal Serv.*, 546 U.S. 481, 486 (2006). This Court has counseled against reading the text of a statute in a manner that would "dramatically separate the statute from its intended purpose." *Lewis* v. *United States*, 523 U.S. 155, 160 (1998). To that end, OCSLA must be understood in the context of this Court's decisions resolving "the clash between national sovereignty and states' rights" on the OCS. *Cont'l Oil*, 417 F.2d at 1036. In-

deed, this Court has consistently and repeatedly interpreted OCSLA in light of this historical background. See, *e.g.*, *Shell Oil*, 488 U.S. at 26-27; *Gulf Offshore*, 453 U.S. at 479 n.7. This background demonstrates that Congress's choice in OCSLA "to retain exclusive federal control of the administration of the [OCS]," *Gulf Offshore*, 453 U.S. at 479 n.7, "affirm[ed] the Federal Government's authority and control over the [OCS]," *Pac. Operators*, 565 U.S. at 212. And because "the OCS [is] subject to the exclusive jurisdiction and control of the Federal Government," *Shell Oil*, 488 U.S. at 27, "federal law should prevail" over state law, *Rodrigue*, 395 U.S. at 358.

B. Congress Deliberately Rejected the Notion that State Law Could Displace Federal Law on the OCS

The historical context also demonstrates that Congress consciously adopted a legal framework that ensured that federal law had an overriding and controlling claim over legal disputes arising on the OCS.

After this Court determined that "the OCS was subject to the exclusive jurisdiction and control of the Federal Government, Congress was faced with the problem of which civil and criminal laws should govern activity on the OCS sites." *Shell Oil*, 488 U.S. at 27. This issue was "the most challenging question of legal theory" Congress faced in drafting OCSLA.[7] Christopher,

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[7] The choice-of-law issue had "political ramifications" because "the law to be applied had a bearing on the question whether the

supra, at 37. "In choosing a body of law to govern leasing and other activities on the [OCS], Congress ultimately settled on a combined federal-state regime." *United Ass'n of Journeymen* v. *Barr*, 981 F.2d 1269, 1270 (D.C. Cir. 1992) (citing Christopher, *supra*, at 37-43). Congress made applicable "the whole body of Federal law" to the OCS "as well as state law where necessary." *Rodrigue*, 395 U.S. at 357, 362; see also 43 U.S.C. §1333(a).

Before settling on this "unique combination of federal and state laws," Christopher, *supra*, at 41, Congress rejected a blanket application of either maritime law or state law to the OCS. See *Rodrigue*, 395 U.S. at 355, 358-359, 361-366. One reason Congress found "the contemplated extension of admiralty law to the OCS * * * unsatisfactory" was the concern that "[t]he so-called social laws necessary for protection of the workers and their families would not apply." Pet. App. 23 (quoting 99 Cong. Rec. 6963). But the Senate's concern with the inapplicability of these laws on the OCS did not, as the Ninth Circuit claimed, "emphasize[] the importance of having state law apply to the OCS * * *." Pet. App. 24. Instead, Congress alleviated the problem by incorporating "the whole body of Federal law" to the OCS, which included the FLSA. *Rodrigue*, 395 U.S. at 362; cf. *Cont'l Oil*, 417 F.2d at 1035 (rejecting a reading of §1333(a)(2)(A) that would "impute[] to Congress the purpose generally to export the whole body of adjacent [state] law onto the [OCS]").

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coastal states were to share in the revenues of the outer Continental Shelf." Christopher, *supra*, at 37, 40-41; see also *Shell Oil*, 488 U.S. at 27-28.

To be sure, Congress was aware of "the special relationship between the men working on these artificial islands and the adjacent shore to which they commute to visit their families * * * ." See *Rodrigue*, 395 U.S. at 355, 363, 365. Seizing on this issue, opponents of OCSLA, led by Louisiana Senator Russell Long, had argued in favor of applying state law on the OCS, enforced by "the officials of such State." *Id.* at 358-359. The Department of Justice, on the other hand, opposed a regime that would place the OCS under "the jurisdiction of state courts, state substantive law, and state law enforcement." *Id.* at 364-365. Congress ultimately agreed with the Administration's view, and rejected "the notion of supremacy of state law administered by state agencies." *Cont'l Oil*, 417 F.2d at 1036 (citing *Rodrigue*, 395 U.S. at 358); see also 43 U.S.C. §1333(a). In doing so, Congress did not ignore the close ties between the workers and the coastal States. Congress's recognition of those ties "manifested itself primarily in the incorporation of the law of adjacent States to fill gaps in federal law." *Gulf Offshore*, 453 U.S. at 479 n.7 (citing *Rodrigue*, 395 U.S. at 365).

Despite the fact that Congress declined to adopt an approach that would result in state substantive law displacing federal law on the OCS, see *Rodrigue*, 395 U.S. at 362; *Cont'l Oil*, 417 F.2d at 1036, the Ninth Circuit's decision accomplishes just that. The text and structure of OCSLA establish that "federal law is 'exclusive' in its regulation" of the OCS, meaning that state law applies only if federal law does not "first apply." See *Rodrigue*, 395 U.S. at 356-359, 366. Stated differently, the existence of a comprehensive federal statutory scheme governing the dispute is the primary

"obstacle to the application of state law by incorporation as federal law" through OCSLA. *Id.* at 366; accord *Offshore Logistics, Inc.* v. *Tallentire*, 477 U.S. 207, 217-218 (1986) (explaining that in *Rodrigue*, federal law did not apply, and thus did not "preclude the application of state law as adopted federal law through OCSLA").

When existing federal law provides a comprehensive governing scheme, "there is no gap—not even a tiny one"—for state law to fill. *Nations*, 483 F.2d at 589. In that situation, "[t]here is no need to bring aboard" state law "to cause liability to be fixed where Congress never intended it." *Id.* at 590; compare *Huson*, 404 U.S. at 101, 103-105 (applying state law where federal law provided "no particular statute of limitations"), and *Rodrigue*, 395 U.S. at 359-360, 366 (applying state law because of the "inapplicability" of federal law), with *LeSassier*, 776 F.2d at 509 (refusing to adopt state law "where Congress provided a specific statutory provision" that addressed the dispute), and *Nations*, 483 F.2d at 589-590 (refusing "to impose outside state oriented obligations" where a federal statute provided "a complete body of law"). The fact that state law "duplicate[s] or supplement[s]" federal law, and thus provides "superior awards," does not create a "gap" justifying the adoption of state law. See *LeSassier*, 776 F.2d at 508-509.

By allowing state law to supersede federal law on the OCS so long as it "pertain[s] to the subject matter at hand," Pet. App. 21, and "embraces a more protective standard" than federal law, Pet. App. 39, the Ninth Circuit's interpretation inverts the analysis and

frustrates Congressional intent. The application of state law on the OCS is "subject to the absence of 'inconsistent' and applicable federal law," *Huson*, 404 U.S. at 103, and not the other way around. As the Fifth Circuit explained when it rejected the same argument almost 50 years ago, the Ninth Circuit's reading of §1333(a)(2)(A) "accords initially a superiority to adjacent state law" because "the question of federal law comes into play only after this process excludes state law." *Cont'l Oil*, 417 F.2d at 1035-1036. This interpretation effectively reads the word "applicable" out of the statute, "put[ting] almost 100% Emphasis on the not inconsistent with federal laws element of [§1333(a)(2)(A)]," *id.* at 1035 (internal quotation marks and alterations omitted), an approach this Court has long disfavored. Cf. *Nat'l Ass'n of Mfrs.* v. *Dep't of Defense*, 138 S. Ct. 617, 632 (2018) ("[T]he Court is obliged to give effect, if possible, to every word Congress used." (citation and internal quotation marks omitted)).

The Ninth Circuit's interpretation is also at odds with the operation of other statutes that use state law to fill gaps in federal law. Take, for example, the Assimilative Crimes Act ("ACA"), on which the panel here relied. Pet. App. 28. As in OCSLA, Congress decided in the ACA to "borrow from preexisting state law," rather than "try[] to write an exhaustive criminal code for federal enclaves." *United States* v. *Christie*, 717 F.3d 1156, 1170 (10th Cir. 2013) (Gorsuch, J.). Much like OCSLA, the ACA "borrow[s] state law to fill gaps in the federal criminal law that applies on federal enclaves." *Lewis*, 523 U.S. at 160. But it does so only to the extent that a defendant's acts or omissions are

"not made punishable by any enactment of Congress." 18 U.S.C. §13(a).

In *Lewis* v. *United States*, this Court rejected the argument—similar to the Ninth Circuit's reading of OCSLA here—that the ACA assimilates state law whenever that law does not "make criminal the same 'precise acts'" as those made criminal by federal law. See 523 U.S. at 162-163. Such a reading of the statute, this Court explained, would allow for the adoption of state law "even where there is no gap to fill," and neither the ACA's language nor its purpose warranted an interpretation that would "significantly broaden[]" the reach of state law into federal enclaves. *Id.* at 163-164. This Court concluded that it was "fairly obvious" that the ACA did not assimilate state law "where both state and federal statutes seek to punish approximately the same wrongful behavior[.]" *Id.* at 165.

The same principles apply to OCSLA's choice-of-law provision. When a comprehensive federal statutory scheme applies on the OCS—such as the FLSA—the application of state law is neither "needed [n]or permitted." *Cont'l Oil*, 417 F.2d at 1035-1036; see also *LeSassier*, 776 F.2d at 509; *Nations*, 483 F.2d at 590. A litigant (or a court) cannot create a gap simply by showing that state law is more protective than federal law. See *LeSassier*, 776 F.2d at 508-509 cf. *United States* v. *Antelope*, 430 U.S. 641, 670 n.13 (1977) (rejecting the argument that state criminal law may apply in federal enclaves to the extent the law is "more lenient than federal law" (internal quotation marks omitted)). By reading §1333(a) to allow for the incorporation of state law "to fill nonexistent gaps," *Lewis*,

523 U.S. at 163, the Ninth Circuit impermissibly expanded the reach of state law on the OCS.

C. The Ninth Circuit's Interpretation Encourages Strategic Behavior by the States to Frustrate Federal Policy

The practical consequences are real. The Ninth Circuit's interpretation gives California law supremacy over a federal regulation explicitly providing that employees who reside on their employers' premises "for extended periods of time" need not be paid for time spent sleeping or otherwise off duty. See Pet. App. 38-39; 29 C.F.R. §785.23; see also *Brigham* v. *Eugene Water & Elec. Bd.*, 357 F.3d 931, 940-941 (9th Cir. 2004); *Halferty* v. *Pulse Drug Co.*, 864 F.2d 1185, 1190-1191 (5th Cir. 1989). In effectively overruling federal law, the panel's reading invites workers (and creative plaintiff's lawyers) to retroactively claim a host of extra-contractual rights based in state employment or other laws following changes in state substantive law. If allowed to stand, the decision will trigger new waves of litigation—and the threat of ever-mounting retroactive liability—every time a State changes its interpretation of its wage, hour, and other employment laws.

The federal-state conflict is stark, where (as here) a federal scheme allows excluding non-working hours from overtime, but state law compels the opposite approach. The Ninth Circuit's decision departs from cases holding that California state wage-and-hour laws could not apply in other federal enclaves. *E.g.*, *Mersnick* v. *USProtect Corp.*, No. 06-cv-3993, 2006 WL

3734396, at *6-8 (N.D. Cal. Dec. 18, 2006) (holding that California wage-and-hour laws did not apply on Air Force base because in federal enclaves, "state regulation is barred without 'specific congressional action' (quoting *Paul* v. *United States*, 371 U.S. 245, 263 (1963))); see also *Holliday* v. *MVM, Inc.*, No. 08-cv-7924, 2010 WL 11519452, at *3-5 (C.D. Cal. June 1, 2010) (holding that California's meal and rest break laws were not "applicable" in federal enclave); cf. *Rodrigue*, 395 U.S. at 355 (fixtures on OCS treated as "federal enclaves").

In practice, some States have—and likely will always have—different policy preferences than the federal government regarding OCS activity. By interpreting §1333(a) in a manner that effectively gives state law supremacy over federal law, the Ninth Circuit's interpretation opens the door to strategic behavior, inviting States to promulgate facially neutral but effectively targeted laws that increase the difficulty and cost of OCS operations.

The concern is not theoretical. In OCSLA, Congress recognized the public interest in the "expeditious and orderly development" of the OCS—"a vital national resource." 43 U.S.C. §1332(3); see also *id.* §§1801-1802. Relying on that congressional policy, the administration has adopted a policy to expand activities on the OCS. See U.S. Dep't of the Interior and Bureau of Ocean Energy Mgmt., *2019-2024 National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program* (Jan. 2018) ("Draft Proposed Program"), https://bit.ly/2lU8cCV; see also Exec. Order 13795, 82 Fed. Reg. 20,815 (Apr. 28, 2017). While some coastal

States have expressed support for the plan,[8] others have taken steps "aimed at blocking oil and gas drilling off their coasts" through state legislation. Stephen Lee & Dean Scott, *Coastal States Link Arms to Oppose Trump Offshore Drilling Plan*, BLOOMBERG ENVIRONMENT (Jan. 8, 2019), https://bit.ly/2BruB3c; see also, *e.g.*, Jessica Resnick-Ault, *U.S. States Slow Trump Offshore Oil Drilling Expansion Plan*, REUTERS (Mar. 12, 2018), https://reut.rs/2ppz5R2 (noting that "California and other states have said they would deny needed permits for onshore services and transport").

In short, the Ninth Circuit's interpretation transforms a statute "intended to provide for the orderly development of offshore resources," *Shell Oil*, 488 U.S. at 27 (citation and internal quotation marks omitted), into a regime of jurisdictional chaos, inviting States to assert ever-increasing authority over commercial activities in an area Congress reserved for primary federal jurisdiction and control.

III. The Ninth Circuit's Interpretation Disrupts Employment Relationships Formed In Reliance On Settled Law

For decades, employers and employees on OCS drilling and production platforms have implemented com-

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[8] See, *e.g.*, Outer Continental Shelf Governors Coalition, *RE: Request for Comments on the 2019 – 2024 Draft Proposed Outer Continental Shelf Oil & Gas Leasing Program* (Mar. 9, 2018), https://bit.ly/2GBcmf9 (statement from the Governors of Alabama, Alaska, Louisiana, Maine, Mississippi, and Texas noting general support for the Draft Proposed Program).

pensation and benefit structures under a shared understanding of substantive background law. Whether by arms-length negotiated contracts, collective bargaining, or other arrangements, these policies have been tailored to the offshore industry, recognizing (among other things) that workers often temporarily reside on premises. The terms of these arrangements generally are far more favorable—including with respect to wages, overtime, and other benefits—than those seen in non-OCS industries typically covered by state wage-and-hour laws. By rejecting the legal principles on which these relationships were based, and potentially exposing employers to massive retroactive liability for reasonably relying on longstanding law, the Ninth Circuit undermined the stability of those relationships, with tremendous practical and financial consequences.

Oil and gas operations on the OCS present unique opportunities and challenges. Production platforms affixed to the OCS operate 24 hours a day and are often in remote locations miles from the coast. While some employees may have the option to return home each night, in other instances, it may be impractical or undesirable to commute. For example, employees may prefer not to commute given travel time and logistics. Others may not reside near enough to allow commuting, for instance choosing to live in a less expensive inland area rather than in a California coastal city such as Santa Barbara. As a result, employees often work agreed-upon shifts, or "hitches," in which the employees work, eat, sleep, and live on the platforms for a specified number of days—typically followed by an equal number of days off. See Pet. App. 3 (14-day

shifts on the platform with employees scheduled to work 12 hours during a 24-hour period, followed by 14 days at home); see also Ron Lieber, *Life on Board a Gulf of Mexico Oil Drilling Platform*, FAST COMPANY (Sept. 30, 2000), https://bit.ly/2BwWaYN.

In recognition of the particular circumstances of work on OCS drilling platforms, employees receive and enjoy above-market salaries, generous benefits, and abundant time off. Long before the decision at issue here, OCS employees received hourly rates "well above the state and federal minimum wage" and "premium rates for overtime hours." Pet. App. 20. The federal government recently estimated that offshore oil and gas workers earn more than 150% of the average hourly wage of other employees,[9] and a study examining the economic impacts of energy activity in Louisiana estimated that the average wage earned by employees in the oil and gas extraction area was 180% of the overall average.[10]

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[9] Draft Proposed Program at 8-4, https://bit.ly/2lU8cCV; see also Jim Nicholson, *The Incredible Economic Opportunities of Offshore Energy Exploration*, NAT'L REVIEW (Oct. 1, 2018), https://bit.ly/2tfOJkk (stating that "natural gas and oil exploration jobs offer average salaries of $116,000 a year, without necessarily requiring a college degree"). Offshore production also "increases the economic contribution to local economies" through onshore jobs, spending and investment, and tax revenue. Draft Proposed Program at 8-5, https://bit.ly/2lU8cCV.

[10] Eric N. Smith, *Louisiana – The Status of the State: A Report on the Impact of Energy Activity on the State's Economy* 46, GREATER NEW ORLEANS, INC. (2014), https://bit.ly/2WSHPiA.

Moreover, during the non-working (*e.g.*, sleeping and recreation) hours within a hitch that form the basis for this lawsuit, employees can use their time as they see fit. The platforms are equipped with various amenities for employees to use free of charge, including cable television, internet access, and fitness and recreation facilities, allowing employees to engage cost-free in many of the same personal and leisure activities they enjoy on land. Employees live and eat rent-free during shifts, with employers providing lodging and bathing facilities, meals, and cleaning services at no cost to employees. And when the hitch is over, the employee returns home to spend an equivalent number of days off.

Employers and employees in the offshore industry have crafted these mutually beneficial wage-and-benefit policies based on a shared understanding of the governing legal framework and the industry's practical and financial realities. By altering the background legal framework, the Ninth Circuit's decision is all but certain to significantly disrupt those relationships. Overnight, employers in the Ninth Circuit became subject to state wage-and-hour laws designed for conventional (*e.g.*, 9-to-5) employment but ill-tailored to the OCS's unique working environment.

Before the Ninth Circuit's decision, interested parties understood that, although they may apply to workers employed in California's "offshore" areas, California's wage-and-hour laws did not extend to federal "offshore" areas. As explained above, the paramountcy cases conclusively established, as a matter of "national

sovereignty," the federal government's exclusive jurisdiction and control over the *entirety* of the OCS. See *Maine*, 420 U.S. at 519-524. Consistent with this framework, owners and operators of offshore oil and gas platforms have long recognized the distinction between federal "offshore" areas and California "offshore" areas. Cf. *Sec'y of the Interior* v. *California*, 464 U.S. 312, 315-316 (1984) (the area extending "three geographical miles seaward from the coastline * * * belongs to the states, while the OCS belongs to the federal government"); *Alabama*, 84 F.3d at 412 (the OCS "begin[s] where the states' jurisdiction ends, i.e., more than three miles from the coast").

In 1999, for example, the California Industrial Welfare Commission ("IWC") held public hearings concerning Assembly Bill 60, known as the "Eight-Hour Day Restoration and Workplace Flexibility Act of 1999." See Cal. Lab. Code §500 *et seq.* The record of those hearings demonstrates that employers recognized the crucial distinction between "offshore" production taking place "within the state water, meaning within the three-mile limit of the coastline" (which would be subject to plenary state regulation) and offshore activity "on the outer continental shelf or federal waters" (which would not).[11] Cal. Indus. Welfare Comm'n, Public Meeting Tr. at 129:8-11 (Dec. 15,

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[11] IWC commissioners likewise limited their comments to "workers *in the state of California*." Cal. Indus. Welfare Comm'n, Public Meeting Tr. at 19:17 (Nov. 15, 1999), https://bit.ly/2TREu1a (emphasis added); see also Cal. Indus. Welfare Comm'n, Public Meeting Tr. at 135:18-19 (Dec. 15, 1999), https://bit.ly/2BBKMei (stating that the bill covered "all workers * * * in California").

1999), https://bit.ly/2BBKMei. The California Supreme Court itself has expressed uncertainty regarding the reach of California employment law to offshore activity outside the State's territorial boundaries. See *Tidewater Marine Western, Inc.* v. *Bradshaw*, 927 P.2d 296, 308-309 (1996).[12]

Further, the vast majority of America's coastal waters currently open to offshore oil and gas production activity are located off the coasts of States within the territorial jurisdiction of the Fifth Circuit.[13] As a result, OCSLA litigation occurs primarily in that circuit. See 43 U.S.C. §1349(b) (suits arising out of oil and gas operations on the OCS may be instituted "in the judicial district of the State nearest the place the cause of action arose"). And since 1969, the Fifth Circuit consistently has interpreted §1333(a)(2)(A) as adopting state law on the OCS "only when needed 'to fill a significant void or gap' in federal law." Br. for Pet'r 27-28 (quoting *Cont'l Oil*, 417 F.2d at 1036); see also, *e.g.*, *Tetra Techs.*, 814 F.3d at 738. Thus, because of the practical realities of OCS oil and gas operations and OCSLA litigation, the Ninth Circuit's decision upsets longstanding expectations on the OCS.[14]

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[12] Notably, the court in *Tidewater* did not analyze, or even mention, OCSLA. See 927 P.2d at 300-302, 308-309.

[13] See Draft Proposed Program at 4-1, 4-7, https://bit.ly/2lU8cCV; Bureau of Ocean Energy Mgmt., *Gulf of Mexico OCS Region*, https://www.boem.gov/Gulf-of-Mexico-Region/.

[14] Numerous district courts in the Ninth Circuit have followed the *Continental Oil* decision. See, *e.g.*, *Williams* v. *Brinderson Constructors, Inc.*, No. 15-cv-2474, 2015 WL 474789, at *4 (C.D. Cal. Aug. 11, 2015); see also Pet. App. 20 n.13. In addition, the

The disruptive effects of the Ninth Circuit's decision are numerous. The Ninth Circuit's interpretation would subject companies and their employees to inconsistent substantive obligations depending on where operations are located, undermining expectations and disrupting contractual and other arrangements.[15] By allowing state law to oust existing federal law on the OCS, the Ninth Circuit's decision exacerbates the practical problem that "federal officials will be required to administer the unfamiliar, complicated, and varying provisions of state law." Christopher, *supra*, at 42.

Even within the Ninth Circuit, OCS operations now face different legal rules, depending on their location. Four States within the Ninth Circuit's jurisdiction—

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federal government has understood *Continental Oil* to be the governing standard on the OCS. *E.g.*, Br. for Appellee, *Mesa Operating Ltd. P'ship* v. *U.S. Dep't of the Interior*, No. 89-04775, 1990 WL 10084692, at *33-34 (5th Cir. Mar. 13, 1990) ("Local laws thus are incorporated only to fill the substantial gaps in the coverage of federal law[.]" (citation, internal quotation marks, and alterations omitted)).

[15] Granted, Congress recognized in OCSLA that in some circumstances, an interest in "national uniformity" would give way to other considerations. Pet. App. 38 (quoting *Gulf Offshore*, 453 U.S. at 487; *Huson*, 404 U.S. at 104); Christopher, *supra*, at 40-41. But Congress assured a minimum degree of uniformity by "incorporati[ng] * * * the law of adjacent States *to fill gaps in federal law*." See *Gulf Offshore*, 453 U.S. at 479 n.7, 486-488 (emphasis added).

California, Oregon, Washington, and Alaska—are adjacent to offshore OCS oil and gas activity.[16] Stark differences exist in their laws, including about compensation for employees who reside on an employer's premises for extended periods of time. Compare *Mendiola* v. *CPS Sec. Solutions, Inc.*, 340 P.3d 355, 361-366 (Cal. 2015) (on-call hours, including "sleep time," represent "hours worked" for overtime purposes), with *Air Logistics of Alaska, Inc.* v. *Throop*, 181 P.3d 1084, 1092-1094 (Alaska 2008) (sleep and recreation time need not be compensated as overtime work); see also Or. Admin. R. 839-020-0042(3) ("An employee who resides on the employer's premises * * * for extended periods of time is not considered as working all the time the employee is on the premises.").[17]

If the panel decision stands, offshore employers will be faced with changing not only base pay and overtime arrangements, but also a range of other employment terms, such as benefit packages. Some benefits provided to offshore workers—such as life insurance policies provided by third-party financial institutions—are tied to a worker's base pay. Thus, reducing base pay to offset the additional cost of paying for sleep time

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[16] See Bureau of Ocean Energy Mgmt., *Pacific OCS Region*, https://www.boem.gov/Pacific-Region/; Bureau of Ocean Energy Mgmt., *Alaska OCS Region*, https://www.boem.gov/Alaska-Region/.

[17] Other States that are adjacent to offshore OCS oil and gas activity have applied federal law to determine hours worked for employees who reside on their employer's premises. See, *e.g.*, *Brown* v. *Allen Parish Police Jury*, 526 So.2d 1190, 1192-1193 (La. Ct. App. 1988); *Perry* v. *George P. Livermore, Inc.*, 165 S.W.2d 782, 784-785 (Tex. Civ. App. 1942).

would have cascading collateral consequences, often to the employee's detriment. The decision's ripple effects stretch beyond employees of platform operators; contractors providing food service, cleaning, and other services on platforms now face uncertainty about paying their own employees.

Moreover, if applied retroactively,[18] the Ninth Circuit's decision could inflict hundreds of millions of dollars of liability on employers who structured operations in reliance on cases like *Rodrigue* and *Continental Oil*. Such a result would give employees—already generously compensated under existing arrangements—a windfall of backpay, plus interest and penalties. Going forward, it is doubtful that employers could offer such generous compensation and benefit terms, if relationships are subject to state-law overtime and other requirements enacted without regard for the unique circumstances of OCS work. Thus, the Ninth Circuit's decision not only creates the potential for significant retroactive liability, it is already disrupting employer-employee relationships, industry-wide.

Both sides would benefit from having a uniform choice-of-law regime governing the OCS. Otherwise, both employers and employees will face a different legal regime depending on whether they are operating in the Gulf of Mexico or off the Pacific Coast—and which neighboring state is closest to that location. In-

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[18] The Ninth Circuit reserved for the district court to decide in the first instance "whether [the] holding should be applied retrospectively." Pet. App. 43 (citing *Huson*, 404 U.S. at 106-107).

deed, because individual employees may move between the Gulf of Mexico and the Pacific Coast on a short-term basis, they could be subject to multiple inconsistent pay structures in a given year or month depending on which State was closest to their platform, even if all work occurred in an area under exclusively federal jurisdiction.[19] Increasing the cost of OCS operations could also shorten the economic life of some offshore facilities, harming not only employees, but also the federal government, and ultimately taxpayers.

The possibility of expanded OCS operations under current U.S. policy will only heighten the need for uniformity and consistency in the governing legal framework. OCSLA authorizes the Secretary of the Interior to offer and administer oil and gas leases on the OCS. *Aera Energy LLC* v. *Salazar*, 642 F.3d 212, 214 (D.C. Cir. 2011). Under such leases, private companies pay "an up-front bonus, annual rentals, and royalties on oil and natural gas actually produced" during the lease term. *Ibid.* (citing 43 U.S.C. §1337(a), (b)); see also 30 C.F.R. §560.202 (describing bidding systems). Offshore activity generates billions in federal revenue; royalties from OCS drilling "constitute the country's second-largest single source of revenue, exceeded only

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[19] For instance, Pacific Coast platform operators may hire specialist teams from the Gulf of Mexico to perform particular tasks, such as plugging and abandonment of wells, on a short-term or extended basis. Such workers could be subject to certain provisions of California employment law beginning with their first full day of work. *E.g.*, *Sullivan* v. *Oracle Corp.*, 254 P.3d 237 (Cal. 2011).

by the federal income tax."[20] Keith Chu, *Will Revenue Sharing Spur More Offshore Drilling?*, GLOBAL ENERGY INSTITUTE, https://bit.ly/2GBakvd; see also Draft Proposed Program at 1-9, https://bit.ly/2lU8cCV. "The OCSLA thus vests the federal government with a proprietary interest in the OCS * * * ." *EP Operating Ltd. P'ship* v. *Placid Oil Co.*, 26 F.3d 563, 566 (5th Cir. 1994) (citation omitted). Increasing the costs and potential liability of offshore production activity could deprive the federal government of significant revenue, not only lowering the government's annual royalties from existing leases, but also deterring operators from bidding on new leases and slowing development on the OCS overall.[21]

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[20] In Fiscal Year 2017, for example, offshore production in the Gulf of Mexico alone provided the federal government with more than $3 billion in revenue. U.S. Dep't of the Interior, *Natural Resources Revenue Data: Gulf of Mexico* (last visited Feb. 13, 2019), https://bit.ly/2ImnkYq.

[21] One recent study estimated that expanding oil and gas activity in the Eastern Gulf of Mexico alone could increase federal revenues from royalties, bonus bids, and rents by some $41.5 billion. See Calash LLC, *The Economic Impacts of Allowing Access to the Eastern Gulf of Mexico for Oil and Natural Gas Exploration and Development* at 5 (2018), https://bit.ly/2GAzRom; see also Draft Proposed Program at 6-15, https://bit.ly/2lU8cCV.

CONCLUSION

For the foregoing reasons, and those in Petitioner's brief, the Court should reverse the judgment of the Court of Appeals.

Respectfully submitted.

BALDWIN J. LEE
ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP
Three Embarcadero Ctr. 12th Floor
San Francisco, CA 94111
(415) 273-7446

KEVIN W. BROOKS
VINSON & ELKINS LLP
2001 Ross Ave., Ste. 3900
Dallas, TX 75201
(214) 220-7805

JOHN P. ELWOOD
KEVIN A. GAYNOR
JEREMY C. MARWELL
Counsel of Record
VINSON & ELKINS LLP
2200 Pennsylvania Ave., NW, Suite 500W
Washington, DC 20037
(202) 639-6500
jmarwell@velaw.com

Counsel for Amici Curiae

GEORGE W. ABELE
PAUL HASTINGS LLP
515 South Flower St., 25th Floor
Los Angeles, CA 90071
(213) 683-6131

Counsel for Beta Operating Company, LLC and Amplify Energy Corp.

DAVID C. MCDERMOTT
DCOR, LLC
290 Maple Court, Suite 290
Ventura, CA 93003
(805) 535-2073

Counsel for DCOR, LLC

DAVID J. COOPER
CATHERINE E. BENNETT
VANESSA FRANCO CHAVEZ
KLEIN, DENATALE, GOLDNER, COOPER, ROSENLIEB & KIMBALL, LLP
4550 California Ave., 2nd Floor
Bakersfield, CA 93309
(661) 395-1000

Counsel for Ensign United States Drilling (California), Inc.

BARRY RUSSELL
INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA
1201 15th Street, NW
Suite 300
Washington, DC 20005
(202) 857-4722

Counsel for Independent Petroleum Association of America

STACY R. LINDEN
MATTHEW A. HAYNIE
AMERICAN PETROLEUM INSTITUTE
1220 L St., NW
Washington, DC 20005
(202) 828-8000

Counsel for American Petroleum Institute

BENJAMIN G. SHATZ
MANATT, PHELPS & PHILLIPS, LLP
11355 W. Olympic Blvd.
Los Angeles, CA 90064
(310) 312-4383

Counsel for California Independent Petroleum Association

EVAN H. ZIMMERMAN
OFFSHORE OPERATORS COMMITTEE
2400 Veterans Memorial Blvd., Suite 206
Kenner, LA 70062
(504) 904-7966

Counsel for the Offshore Operators Committee

PETER C. TOLSDORF
MANUFACTURERS' CENTER FOR LEGAL ACTION
733 10th St., NW
Ste. 700
Washington, DC 20001
(202) 637-3133

Counsel for National Association of Manufacturers

OYANGO A. SNELL
WESTERN STATES PETROLEUM ASSOCIATION
1415 L Street, Suite 900
Sacramento, CA 95814
(916) 325-3115

Counsel for Western States Petroleum Association

RANDALL LUTHI
NATIONAL OCEAN INDUSTRIES ASSOCIATION
1120 G Street, NW
Suite 900
Washington, DC 20005
(202) 347-6900

Counsel for the National Ocean Industries Association

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